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State Government Committee

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HB 1788

**Brief Description:** Regulating job order contracting for public works.

**Sponsors:** Representatives Miloscia, Armstrong and Haigh.

**Brief Summary of Bill**

- Allows public bodies authorized to use alternative public works contracting procedures to award contracts using a new process to award contracts for public works called the job order contract process.

**Hearing Date:** 2/25/03

**Staff:** Marsha Reilly (786-7135).

**Background:**

Differing procedures are established for state agencies and various local governments to award contracts for public works projects.

Several different state agencies and local governments have been authorized to use alternative public works contracting procedures to award contracts on certain public works contracts of a very large dollar value. One alternative procedure is the *design-build* procedure. Another alternative procedure is the *general contractor/construction manager* procedure. Authority to use these alternative procedures terminates July 1, 2007.

Agencies authorized to use alternative public works contracting procedures include the Department of General Administration, the University of Washington, Washington State University, cities with a population in excess of 75,000 (and any public authority chartered by such city under RCW 35.21.730 through 35.21.755), counties with a population of greater than 450,000, public utility districts with revenues in excess of \$23 million dollars per year, port districts with revenues in excess of \$15 million per year, and school districts proposing projects that are considered and approved by the School District Project Review Board.

**Summary of Bill:**

Public bodies authorized to use the alternative public works contracting procedures may award contracts using a new procedure called a *job order contract* for public works. The authority to use job order contracts terminates on July 1, 2007.

A job order contract is a contract where a contractor agrees to perform an indefinite quantity of public works jobs as defined under individual work orders over a fixed period of time.

Process to award a job order contract.

A public entity must determine that the job order contract process will eliminate time-consuming and costly aspects of traditional public works contracting before using this process. Once this determination is made, a request for proposals is published describing a number of details, including a description of the scope of job order contracts, identification of the specific unit price book that will be used to determine accepted industry standards for materials, labor, equipment, overhead, and bonds, and the minimum contracted amount committed to the selected job order contractor. The public body establishes a committee that evaluates proposals and selects the most qualified finalists. The most qualified finalists submit final proposals, including sealed bids based upon the identified unit price book.

The public body awards the contract to the firm submitting the highest scored final proposal using evaluation factors and the relative weight of factors published in the public request for proposals. A protest period of 10 days is allowed following the announcement of the apparent successful proposal to allow a protester to file a detailed statement of grounds for the protest. The public body promptly determines the merits of the protest and provides a written determination. A job order contract may not be executed until at least two business days following the decision on the protest.

The job order contractor is required to submit a plan that would equitably spread subcontracting opportunities to certified women and minority businesses. The public body will not issue any work orders until the job order contractor's plan has been approved.

Restrictions on job order contracts.

A job order contract may not be executed for an initial contract term of more than two years, but may be renewed or extended for an additional year. All job order contracts must be executed before July 1, 2007, but a job order contract existing at that date may be extended or renewed after that date.

A public entity may not have more than two job order contracts in effect at any one time. The maximum total dollar amount that is awarded under a job order contract may not exceed \$3 million in the first year, \$5 million over the first two years, or \$8 million over the three-year period if the contract is renewed or extended.

A work order for a single project may not exceed \$200,000, and a public body may not issue more than two work orders equal to or greater than \$150,000 in a 12-month period.

No more than 20 percent of the dollar value of the work order may consist of items that are not included in the unit price book. At least 80 percent of the job order contract must be

subcontracted to entities other than the job order contractor.

A new permanent, enclosed building space that is constructed under this process may not exceed 2000 square feet.

Special provisions are made to measure damages to a contractor if the public entity fails to order a minimum amount of work indicated in its request for proposals. No other remedies are allowed. The damages are equal to the minimum amount of work that is indicated in the request for proposals, less the amount of work actually done, multiplied by an appropriate percentage for overhead and profit contained in the general conditions for Washington State facility construction.

Individual work orders are treated as separate contracts. Therefore, requirements for performance bonds, retainage requirements, and interest paid on public contracts apply to each work order rather than the job order contract. Those sections of statute that pertain to performance bonds, retainage requirements, and interest paid are amended to exclude job order contracts as described in this bill.

The requirement that subcontractors performing 10 percent or more of a total contract be listed by the general contractor within one hour after the general contractor submits its bid on a project estimated at \$1 million or more does not apply to requests for proposals for job order contracts.

Job order contractors are required to pay prevailing wages for all work that otherwise would be subject to those requirements.

**Appropriation:** None.

**Fiscal Note:** Requested on February 19, 2003.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.